

REMARKS

This amendment responds to the official action mailed July 31, 2008, wherein claims 1-3, 8, 9 and 12 were considered anticipated by US 6,270,022 – Knapp and claim 32 was considered obvious from Knapp. Reconsideration is requested in view of this amendment.

The claims have been amended to more particularly and distinctly define the subject matter of the invention and to better distinguish over the disclosure of Knapp. The claims define fundamental distinctions over Knapp, including differences in particular structures, and differences in the arrangements of structures. There is no basis to conclude that Knapp meets all the limitations claimed.

In order to support a rejection of a claim for lack of novelty under 35 U.S.C. §102, a prior art reference must disclose the same invention as defined in the claim. Claim 1 contains a recital of elements and also a recital of arrangements of the elements, associated with ways that the invention functions. Knapp does not anticipate the subject matter defined by claim 1, and there is no basis to conclude that that subject matter claimed as a whole would have been obvious.

Referring to Fig. 1 of Knapp and the associated description, a showerhead housing 10 [col. 3, line 14] has a first perforated plate 13 with holes 14 through which water flows from the water chamber 11 in the housing 10. Each hole 14 projects an individual jet of water. [Col. 3, lines 21-23.] The jets from holes 14 are not aerated [col. 3, line 30-32], but the jets are confined and aimed such that the jets flow through the holes 17 of a second perforated plate 16, which holes 17 are aligned with holes 14 in first plate 13. As the jets enter and pass through holes 17 in the second perforated plate, air is sucked in from space 20, and the jets emerge from plate 16 as aerated jets. [Col. 4, lines 14-26.]

According to applicant's claim 1, the invention comprises an aerator with a hub. The hub is located centrally in the jet disk. The hub has an axial passage through which air intake takes place from the front face of the jet disk. The hub has at least one radial

air conduit in a vicinity of an end that is located upstream of the jet disk. None of these aspects are met in Knapp or suggested by Knapp. The rejection under Section 102 lacks a proper basis. Knapp and the other prior art also fail to demonstrate that the person of ordinary skill might expect to obtain a beneficial result by reconfiguring the Knapp structure as claimed by applicant. On the contrary, reconfiguring would defeat the aspects that Knapp relies upon to aerate jets by entraining air into non-aerated jets as the jets are shot from one aperture 14 into another aperture 17, across an air gap between spaced plates 13 and 16.

In the last official action, it is stated that Knapp comprises a hub 16. But item 16 in Knapp is not "a hub." No authority is cited in the official action to justify construing the spray emitting jet disk as a hub. Such a construction is not consistent with the dictionary definition of that term. A "hub" as defined in Webster's New Collegiate Dictionary, 11th Ed., 2003, is the central part of a circular object (such as a wheel or propeller). (Emphasis added.) Element 16 in Knapp is the second perforated plate, i.e., the jet disk from which aerated jets emerge, and is not the central part of anything. The reliance in the official action on plate 16 of Knapp as a hub is erroneous. Applicant requests reconsideration and withdrawal of the rejection due to the erroneous meaning officially imparted to the term "hub."

The official action goes further in efforts to interpret the disclosure of Knapp allegedly to resemble the claimed invention. In so doing, the examiner interprets the space 20 between Knapp's spaced plates 16 and 17 as a housing "because a small amount of water will enter the space in the embodiment of Figure 2 since the outlet of apertures 14 are slightly larger than the inlets of passages 17."

Reconsideration is also requested regarding what part of Knapp might be appropriately regarded as a housing. Knapp's disclosure expressly defines the showerhead housing as part 10. [Col., 3, line 14]. A "housing" as defined in Webster's, supra, is something that covers or protects, as a case or enclosure, which is accurate for Knapp's housing 10 but is not an apt description for the space 20 between plates 16, 17. The space 20 is not an enclosure or encasement. There are apertures or passageways facing in every direction, through plates 16, 17 and through

circumferential flange 18 surrounding space 20. There is no basis to assert that any arbitrarily-identified space must be defined by a housing. Whether or not "a small amount of water" might be found in an arbitrary space does not logically establish that such a space is a space within a housing.

It is apparent that the prior art does not meet the limitations stated in claim 1. Even it might be proper arbitrarily to rename structural elements without regard to the inherent structural aspects associated with the names of those elements (such as "hub" and "housing"), which applicant contends is not proper, the existence of elements in the prior art that can be named as hubs or housings or the like, would not establish legally sufficient grounds of rejection under 35 U.S.C. §102.

To anticipate a claim under §102, a single prior art reference must expressly or inherently disclose each claim limitation, but disclosure of each *element* is not enough. Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention, and those elements must be arranged as stated in the claim. See Net MoneyIn, Inc. v. Verisign, Inc. et al., No. 2007-1565 (Fed. Cir. 10/20/2008); See also In re Arkley, 455 F.2d 586, 587 (CCPA 1972) ("[T]he [prior art] reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without any need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.").

During patent prosecution it may be appropriate for an examiner to take the broadest interpretation of claim language *that is consistent with the specification*. But it is not appropriate or consistent with the present specification to depart from the settled definitions of terms such as "hub" that are used in the specification according to the dictionary definitions of such terms. The rejection under 35 U.S.C. §102 is not sufficient as it is based on selective and arbitrary naming of elements in the Knapp disclosure, which disclosure clearly does not teach the same arrangements of parts as claimed. Knapp achieves the ultimate ends of spraying and aerating, but only by using structures and functions that are unlike those of applicant's claimed invention. Knapp does not disclose the *same invention* claimed by applicant. Therefore the rejections under §102 over Knapp should be withdrawn.

Applicant has amended claim 1 to more particularly and distinctly define the elements of the invention, how the elements are arranged relative to one another and how the elements and their arrangement operate to generate aeration jets at a hub upstream of the jet disk. Even if the examiner is correct to maintain that the term "hub" has no associated structural characteristics, applicant's claim 1 defines a hub that is located at a stated position (upstream from the spray emitting jet disk and centrally in the jet disk, rather than corresponding to the jet disk). Applicant's hub has an axial passage for air intake. Applicant's hub is configured with structures (axially arranged guides) for guiding discrete aerated jets (not confined water jets) toward the apertures.

Claim 1 recites elements and also arrangements of elements that are not found in Knapp. The differences in structure and operation preclude a finding of anticipation. There is no explanation of record, and there is no explanation reasonably possible, that sets forth a plausible series of modifications from the prior art to reach the claimed invention, each modification supported by articulated reasons why the person of ordinary skill might expect the modification routinely to lead to beneficial results. Therefore, the invention also has not been shown to have been obvious.

Claims 1, 2, 8, 9, 12 and 32 are under consideration. The claims depend directly or indirectly from claim 1 as amended, which claim is properly allowable. The differences between the invention and the prior art are such that the subject matter claimed as a whole is not shown to have been known or obvious.

Applicant requests allowance of claims 1, 2, 8, 9, 12 and 32. Applicant also requests rejoinder of the claims that have been withdrawn from consideration and allowance together with claim 1, from which they depend.

Respectfully submitted,

Date: December 24, 2008

/Stephan Gribok/
Stephan P. Gribok, Reg. No. 29,643
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
tel. 215-979-1283
fax. 215-689-2443
spgribok@duanemorris.com

Docket No.: D4700-00395
P42491 WO/US